provided" BSLD with "competitively sensitive information about BST's operations, network, and future actions" through these employees. Id. There is no basis for MCI's concern. All BellSouth employees are bound by confidentiality requirements, and must sign a document that warns them that they cannot make improper use of proprietary information. Betz Aff. ¶ 17. BSLD also conducts education sessions, attended by every employee, regarding the requirements of the Act. Wentworth Aff. ¶ 15. These actions minimize as fully as possible the possibility of inappropriate use of confidential information.

Having learned through BellSouth's section 272 disclosure that BSLD has entered into an agreement to purchase collocation space in BST facilities, MCI suggests that "the timing of these apparent transactions raises questions about whether BSLD has access on a discriminatory basis to information about exhaustion of collocation space and whether BSLD and BST are cooperating to preempt unaffiliated carriers that have a more urgent and serious need for the space." MCI at 69. MCI offers no support for this suggestion, which is false. Wentworth Aff. ¶ 15. BellSouth provides and will continue to provide collocation space on a nondiscriminatory basis; BST has shown no preferential treatment to BSLD with regard to any aspect of collocation. Cochran Reply Aff. ¶ 17.

MCI also demands that BellSouth disclose business information on whether BSLD will potentially use BST's official services network. MCI at 67. Any such use would have to be in compliance with the restrictions currently imposed by the Commission's implementing orders. Subject to the joint marketing authority granted by section 272(g), moreover, BST does and will continue to make available to unaffiliated entities any goods, services, facilities, and information that BST provides or will provide to BSLD at the same rates, terms, and conditions. Varner Aff. ¶ 221. There is thus no legitimate compliance basis for the disclosure of this information; section

272 is not a mechanism through which CLECs may review BellSouth's confidential business plans.

AT&T and MCI also reargue issues this Commission has already conclusively decided. AT&T complains that BellSouth's use of customer proprietary network information ("CPNI") "cannot be squared" with the requirements of section 272, but concedes that the Commission has already rejected AT&T's argument. AT&T at 84-85. BST will not disclose any individually identifiable CPNI to BSLD except to the extent that such disclosure is consistent with section 222 and the Commission rules. Varner Aff. ¶ 229.

AT&T also contends that BellSouth should not be allowed to conduct joint marketing during inbound and outbound calls, while acknowledging that BellSouth's approach was expressly approved by the Commission in its South Carolina Order. AT&T at 85-86. AT&T argues that BellSouth's intention to recommend BellSouth long distance service at the outset of inbound calls for new service should be considered a violation of the Act's equal access requirements. The Commission firmly rejected this argument in the South Carolina Order, noting that its previous decision to reject similar language "placed too much weight on equal access obligations, and too little weight on the BOCs' right to jointly market local and long distance services." 13 FCC Rcd at 671, ¶ 238. AT&T's effort to read section 251(g) of the Act as negating the explicit authorization of joint marketing that is granted in section 272(g) is utterly implausible. Moreover, as the Commission has recognized, BellSouth need not submit a proposed marketing script at all in connection with its 271 Application. Under these circumstances, the claim that such a proposed script could form the basis for denial of the Application is entirely without merit. BellSouth will engage in joint marketing consistent with the Commission's South Carolina Order, which merely confirms the authorization directly provided by section 272(g). Varner Aff. ¶ 249; Cochran Reply Aff. ¶22.

MCI complains that BST has not disclosed any agreement with BSLD for compensation for use of the BellSouth name, while acknowledging in a footnote that the Commission has decided that such compensation is not necessary. MCI at 70. Moreover, the "BellSouth" brand name belongs to BellSouth Corporation, which allows its corporate family members to use the brand name. Cochran Reply Aff. ¶ 18.

CLECs' intrusive, unwarranted demands, as well as their continued attempt to re-litigate issues that this Commission has already decided, demonstrate the degree to which CLECs are abusing the requirements of compliance with section 272 when providing interLATA services. The Commission should put an end to these escalating demands by expressly finding that BellSouth has complied with section 271(d)(3)(B).

V. THE PUBLIC BENEFITS OF FULL INTERLATA COMPETITION ARE OVERWHELMING

Despite the best efforts of the long distance incumbents to confuse the issue – and despite prior, erroneous Commission dicta – the "public interest" inquiry under the statute is a straightforward one: Will BOC entry into the interLATA market benefit consumers of long distance services? There can be no serious dispute that the answer to this question is "Yes." BOC entry into the interLATA market in general, and the market for interLATA services in Louisiana in particular, will provide tremendous welfare benefits to consumers, who stand to gain billions of dollars every year from the price reductions brought about by greater competition nationwide. As the long distance carriers implicitly admit, much of this benefit will redound to the very consumers that are most ill-served by the incumbent oligopolists – low volume users.

Approval of BellSouth's Application will also spur the development of "one-stop shopping," which is desired by consumers and which the long distance incumbents – comfortably protected by the interLATA restriction – have been slow to offer to most callers.

On the other side of the coin, the incumbent long distance carriers utterly fail to establish any possibility that BellSouth's entry would pose a threat to competition in the long distance market. There is no realistic chance that BellSouth could abuse its position in the local market to impede competition in the long distance market; the interexchange carriers' claims to the contrary have been thoroughly refuted by economic experts and decisively rejected by the Commission.

The question whether the local market is sufficiently open to competition has no direct bearing on the public interest inquiry, for where a BOC has complied with the competitive checklist of section 271(c)(2)(B), Congress has prohibited the Commission from imposing any further requirements for "[a]ccess or interconnection provided or generally offered by a Bell operating company." 47 U.S.C. § 271(d)(4). But even if the Commission were to consider the effect of interLATA entry on local competition, the Louisiana PSC and several other State commissions have rightly recognized that section 271 relief will spur the long distance incumbents finally to abandon their regulatory gamesmanship and to compete for residential customers in Louisiana. <u>See</u> BellSouth Br. at 105-06; Louisiana PSC at 8-9. As long as the incumbents are free to reap oligopoly profits in the long distance market, they have little motivation to compete in the local residential market, where regulation has kept prices at cost, and sometimes even below cost.

This has not stopped the long distance incumbents from continuing to argue that some open-ended local-market concessions from BellSouth, beyond the fourteen checklist requirements Congress established, would bring greater benefits to consumers than Bell company long distance entry. Repeatedly challenged to quantify the supposed consumer benefit of market-opening measures beyond those contained in the checklist, however, the long distance carriers and their allies have been conspicuously silent. Given the extensive measures that Congress has mandated to ensure that local markets are open, and given BellSouth's compliance with those requirements, the interexchange carriers' pleas for continued protection from competition amount to no more than naked special interest pleading.

Finally, the few claims opponents make that BellSouth has abused market power in the past are so insubstantial and poorly documented as to emphasize that BellSouth has acted in a remarkably and consistently pro-competitive manner in all of its dealings with its rivals in the local and long distance markets alike.

A. The Focus of the "Public Interest" Inquiry Is Competition in the InterLATA Market

As BellSouth established in its opening Brief, the Commission's may not use the "public interest" test as a vehicle for imposing requirements for BOC entry into the interLATA market that would violate the Act. BellSouth Br. at 73-76. Congress has made clear that the competitive checklist set forth in section 271(c)(2)(B) is the exclusive standard for openness of the local market. The Commission simply "may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)." 47 U.S.C. § 271(d)(4). There is no exception to this limitation, not even for consideration of the public interest.

The incumbent long distance carriers nonetheless continue to insist that "the focus of the public interest inquiry . . . must remain on the status of competition in the local market." WorldCom at 30; see AT&T at 88-90 (discussing supposed status of market-opening measures in the local market); MCI at 85-88 (same). To be sure, the Commission has stated, in dictum, that the public interest inquiry "should focus on the status of market-opening measures in the relevant local exchange market." Michigan Order, 12 FCC Rcd at 20745, ¶ 385. But as BellSouth has shown, the Commission's statement ignores the command of Congress that compliance with the competitive checklist – no more and no less – is the only appropriate criterion for market openness for purposes of section 271. See 47 U.S.C. § 271(d)(4). Because "agency discretion is defined by and circumscribed by law," the Commission's discretion could not under any circumstances "encompass the authority to contravene statutory commands." Farmworker Justice Fund, Inc. v. Brock, 811 F.2d 613, 622 (D.C. Cir.), vacated on other grounds, 817 F.2d 890 (D.C. Cir. 1987). This is true whether the Commission establishes additional "checklist condition[s] on approval of all Applications," Sprint at 75, or further local market "factors," Michigan Order, 12 FCC Rcd at 20747, ¶ 391. "[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). Therefore, as the Senate Commerce Committee's Chairman observed, "[t]he FCC's public-interest review is constrained by the statute" because "the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist." 141 Cong. Rec. S7967 (June 8, 1995) (statement of Sen. Pressler).

Not only do the opponents of competition in the interLATA market call for a free-wheeling and subjective inquiry into the supposed openness of local markets – checklist or no checklist – they even advocate various tests of actual local competition that Congress and the Commission have directly rejected. See, e.g., MCI at 99 (arguing that the Act was "designed to ensure that competition in local markets is established before opening the in-region long distance markets to the BOCs"); Sprint at 68 (advocating a test requiring "vigorous competition on a facilities-basis" as a prerequisite for section 271 relief); CompTel at 30 ("Congress wanted to vest in the Commission the discretionary power to deny BOC entry into the long distance market until the goal of substantial competition in the local marketplace is realized."). Section 271(c)(1)(B) makes clear, and the Commission itself has confirmed, Oklahoma Order, 12 FCC Rcd at 8717-18, ¶ 55, that competitors' entry into the local exchange is not a prerequisite to Bell company entry into in-region interLATA markets. Congress determined that while regulators should ensure symmetrical opportunities for local and long distance entry, entry tests that turn on measures of actual local competition would (if administrable at all) be contrary to the public interest. See Michigan Order, 12 FCC Rcd at 20584-85, ¶¶ 76-77.

Needless to say, the Commission should also continue to reject the suggestions of the Competition Policy Institute —an entity drawing most of its financial support from the major long distance carriers —that the Commission adopt a "realistic choice" standard for interLATA entry. CPI at 1-2; see also Litan & Noll 16-23. This test, as articulated by Drs. Litan and Noll, would presumptively require some proportion of the consumers in a given region to have a choice among three different facilities- based local carriers before the Commission could grant a BOC's Application for entry into the in-region interLATA market. Litan & Noll at 16-23. Congress rejected such "metric" tests, see Michigan Order, 12 FCC Rcd at 20585, ¶ 170, and the Commission therefore must reject them as well.

The Commission likewise may not use the public interest standard as a vehicle for enacting substantive policies that are in conflict with the 1996 Act. Some CLECs advocate, for example, reintroduction of the Commission's invalidated rule requiring provision of UNE combinations under the guise of the public interest test. See TRA at 30-35; MCI at 89; see also

DOJ at 11-16. This rule has been struck down as incompatible with terms of the Act. Iowa Utils. Bd., 120 F.3d at 813. It would not be any more harmonious with the congressional framework if imposed upon Bell companies through the public interest test. See Iowa Utils. Bd. v. FCC, 135 F.3d 535 (8th Cir. 1998), petition for cert. pending, No. 97-2519 (filed Mar. 13, 1998). Needless to say, the public interest test does not provide a license for the Commission to ignore the binding judgment of a federal court.

B. The Benefits of BOC Entry Into the InterLATA Market Cannot Be Seriously Disputed

This Commission recognized in the Michigan Order that Bell company entry into interLATA services will tend to promote competition in that market and thereby benefit consumers. 12 FCC Rcd at 20746, ¶ 388. The comments of the Louisiana PSC and the conclusions of telecommunications users and equipment manufacturers likewise reflect consensus that BellSouth's interLATA entry will increase consumer choice, lower prices, stimulate demand, and benefit ordinary consumers and the Louisiana economy.[22] The Department of Commerce has confirmed that "[e]ntry by the Bell local exchange carriers into [long distance] should reduce prices and reduce the 81 percent market share now enjoyed by the big three carriers: AT&T, MCI, and Sprint."[23] Experience in Connecticut provides a concrete example of the gains to be had from permitting competition to flourish in the highly concentrated long distance market, indicating that the consumer savings from BOC entry into the interLATA

[22] See Louisiana PSC at 2, 8-9; 1997 Louisiana PSC Comments at 19-20; Triangle Coalition; Keep America Connected; Alliance for Public Technology; Ad Hoc Coalition of Telecommunications Service Managers and Telecommunications Manufacturing Companies at 2-3 & Ex. 2, at 12-14 (FCC Dkt. 97-231; filed Nov. 25, 1997).

[23] U.S. Dep't of Commerce, U.S. Industry & Trade Outlook '98, at 30-38.

market can be expected to approach $7 billion dollars each year. See Hausman Aff. ¶¶ 8-21; see also Schmalensee Aff. ¶¶ 61-64.

Interexchange carriers argue – contrary to the animating principle of the 1996 Act – that the long distance market is already competitive enough, and that BOC entry therefore does not promise significant consumer benefits. See, e.g., AT&T at 94-99; WorldCom at 28. They are wrong, as ample data proves.

1. The Long Distance Market is Characterized by Oligopoly Pricing

Despite a decline in access charges of 35 percent between 1991 and 1998, AT&T and the other interexchange carriers have actually raised basic rates during this period. See BellSouth Br. at 78. The interexchange carriers' economists assert that long distance markets are competitive, see, e.g., AT&T's Baumol Aff. ¶¶ 16-18; AT&T's Hubbard & Lehr Aff. ¶¶ 28-52; MCI's Hall Aff., but they never come to grips with the extensive record evidence that long distance prices significantly exceed costs. Indeed, the incumbents' attempts to explain away increases in their price-cost margins are remarkably transparent.

The Big Three's economists employ two principal devices to disguise the absence of competitive pricing for residential customers. They lump residential callers together with business customers, thereby "hid[ing] the increases in rates that residential customers have paid in recent years." Schmalensee [1997] Reply Aff. ¶ 21 (originally filed in Docket No. 97-208) (Reply App. Tab 19); see id. ¶ 9; Hausman Aff. ¶ 58. In addition, they systematically overstate the significance of discount plans, see Schmalensee Reply Aff. ¶¶ 23-26, going so far as to base their claims of falling prices on the best rates theoretically available to residential customers rather than the rates actually paid, id. ¶¶ 11, 25.

When corrected for these "grossly misleading" devices, id. ¶ 11, the incumbent's own data confirm that residential prices have increased in recent years while access charges (and other costs) have fallen, leaving a large class of residential customers who are served at prices well above cost. Id. ¶¶ 5-34. Moreover, while the interexchange carrier economists rely upon discounts and flat-rate plans as their basis for asserting that prices are falling, those plans have themselves become vehicles for price increases. See generally BellSouth at Br. 79. And as Professor Schmalensee explained in his opening affidavit, AT&T and MCI use discounts not only to discriminate against low-volume customers, but also against higher-volume customers who are not price sensitive. See id. at 80.

Evidence of the anti-consumer behavior among the long distance incumbents continues to mount. See BellSouth Br. at 77-82. An exhaustive study of long distance pricing recently published in a leading academic journal showed that the margins of price over costs in the long distance market have increased steadily over the last decade.[24] The Consumer Federal of American and Consumers Union informed the Commission that their study of data from the Commission, Interexchange Carriers and local carriers indicates that "as much as $2 billion in interexchange [access charge] price reductions have not been passed through to consumers and businesses."[25] Plainly, there is much room for the "additional competitive benefits" of Bell company entry. Michigan Order, 12 FCC Rcd at 20746 n.1001 (quoting DOJ).

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[24] Paul W. MacAvoy, Testing for Competitiveness of Markets for Long Distance Telephone Services: Competition Finally?, 13 Rev. Indus. Org. 295 (1998).

[25] Letter of Gene Kimmelman, Consumers Union and Dr. Mark Cooper, Consumer Federal of America, to Chairman William E. Kennard, FCC (dated Aug. 13, 1998) (Reply App., Tab 17).

2. *Experience in Connecticut and Elsewhere Provides a Vivid Illustration of the Consumer Benefits of BOC Entry*

Drawing upon actual market experience where incumbent LECs, such as SNET and GTE, have provided or sought to market interLATA services. Professor Hausman explained in BellSouth's Application that excluding Bell companies from long distance deprives residential consumers of approximately $7 billion dollars in long distance savings per year. Hausman Aff. ¶¶ 5, 19-24.

The interexchange carriers' objections to this analysis were anticipated in and refuted by Professor Hausman's opening affidavit. See Hausman Aff. ¶¶ 36-71.[26] The crucial and undisputed point to remember is that an astonishing 35-40 percent of Connecticut consumers have switched to SNET in the short time that it has been permitted to provide in-region long distance service. As AT&T's own experts confess, such "customer switching . . . demonstrates consumer sovereignty." AT&T's Hubbard & Lehr Aff. at 34. While opponents attempt to quibble with the amount of the consumer welfare gain from the advent of effective competition in long distance markets, the sheer number of consumers who have switched to SNET in Connecticut demonstrates beyond cavil that such a gain will be significant indeed.

The Connecticut experience also emphasizes that a crucial benefit of BOC entry will be a reduction in the prices paid by lower-volume long distance consumers, who typically do not

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[26] In addition to the objections already addressed by Professor Hausman, Sprint argues that it is "commonly known" that the average length of a residential long-distance call is approximately twice that of the 4 minutes used by Professor Hausman, and that using a different length changes the differential between SNET's and AT&T's pricing significantly. Sprint's Banks Aff. at 7-8. The FCC's own data, however, show that as of December 1997, the average length of a residential long-distance call 4.086 minutes. FCC, Preliminary Statistics of Communications Common Carriers, 1997 ed., at Table 2.6 (1998) (dividing the total originating and terminating

The Connecticut experience also emphasizes that a crucial benefit of BOC entry will be a reduction in the prices paid by lower-volume long distance consumers, who typically do not receive discounts. As Professor Schmalensee pointed out in his opening affidavit, "[t]he fact that SNET gained a much larger share of customers than revenues indicates that its interstate customers are primarily low-usage customers, who have not benefited from the Big Three's strategy of increasing basic rates and offering various discount plans." Schmalensee Aff. ¶ 62. By contrast, AT&T again revealed its utter disdain for low-volume users when it recently announced a $3 minimum charge for long-distance customers, even if they do not make any calls at all.[27] As one consumer advocate stated, "The new ethos is 'If you're not making a lot of calls, go away.'"[28]

AT&T challenges BellSouth's contention that its marketing strength will be most pronounced among low-usage consumers, see AT&T at 96-97, but the Connecticut experience shows that BOC entry will benefit precisely those low-volume residential users whom AT&T finds so unattractive to serve. The reason for this, moreover, is clearly explained in Professor Schmalensee's affidavit: BellSouth will have low incremental costs in serving low-usage customers due to economies of scope. Schmalensee Aff. ¶ 41.[29] AT&T has claimed that $3 per

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[27] AT&T to Charge $3 a Month As a Long-Distance Minimum, N.Y. Times, Aug. 15, 1998, at D2.

[28] Letter of Gene Kimmelman, Consumers Union (Aug. 13, 1998).

[29] The interexchange carriers attempt to score rhetorical points by arguing that Bell company entry into out-of-region long distance has been limited. MCI's Hall Aff. ¶ 11 (attached to MCI Comments at Exh. E); AT&T's Hubbard & Lehr Aff. ¶ 39. The attempt falls flat precisely because BellSouth cannot realize the same substantial economies as a market entrant out-of-region. See Schmalensee Aff. ¶¶ 41-49.

month is its break-even point for long distance customers.[30] While this figure is probably significantly inflated, see Schmalensee Aff. ¶ 23, BellSouth's entry into in-region, interLATA services will put strong pressure on AT&T to compete by making its break-even point significantly lower.

3. *Introduction of Bundled Service Will Provide An Important Consumer Benefit*

Perhaps the most extraordinary claim by the interexchange carriers is that the bundling of local and long distance service that section 271 relief would make possible is a competitive detriment, rather than a significant consumer benefit. See MCI at 98 ("BellSouth [would have] a unique and unjustified ability to provide bundled local and long distance services."); CompTel at 33; CPI at 29; MCI's Hall Aff. ¶¶ 214-216. This argument is exactly backwards: the only thing that stands between the ability of every carrier – BellSouth and its competitors – to offer bundled services in Louisiana is the restriction on BOC entry into long distance.

Consumers desire and will benefit from the provision of bundled services. See BellSouth Br. at 87-89. But CompTel complains that "no carrier would be able to match BellSouth's ability to provide 'one-stop shopping' for local and long distance service." CompTel at 33. CompTel is doubly wrong. Today, only BellSouth is barred from providing bundled services, while the selective provision of bundled local and long distance service has been an important part of the business strategies of the major interexchange carriers and other CLECs. See BellSouth at 89. Indeed, the ability to offer packages of local and interLATA services "is a formidable source of competitive advantage" for AT&T and MCI over BellSouth, which these

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[30] Letter from C. L. Ward, AT&T to W. F. Caton, FCC, CC Docket Nos. 79-252, 93-197, 80-286, at 8 (March 9, 1995).

carriers are actively exploiting in serving business customers. Gilbert Aff. ¶¶ 7-10, 16. As for tomorrow, section 271(e)(1) of the Communications Act specifically guarantees AT&T, MCI, and Sprint the same easy entry into this area of competition (through local resale) that all other CLECs enjoy today. Nor could it be argued that bundling would not be practically available if the Commission relied simply on the checklist to open local markets. Resale opportunities are a condition of interLATA authority under checklist item (xiv) and the other checklist items ensure competitors every facility and service Congress found necessary to enter the local market. As Professor Gilbert has explained, if customers take a bundled service package from BellSouth, it will be because they prefer it.[31]

C. BellSouth's Entry Into the InterLATA Market Poses No Threat to Competition

Without any evidence to rebut the observed fact that prices fall when incumbent LECs enter the interLATA market, the Big Three are forced to trot out old, speculative theories of possible discrimination or cross-subsidy that are grounded in the antitrust case against the Bell System and that take almost no account of changed circumstances (such as technological advances, network changes, divestiture of the Bell companies, federal and state regulatory reforms, developments in interLATA markets, and the 1996 Act) in the intervening fifteen years.

MCI, for example, claims that because access charges exceed costs, BellSouth will be able to put a "price squeeze" on it competitors. See MCI at 91-93; see also AT&T at 91-92. The quick answer to this claim is that the Commission has firmly rejected it, as BellSouth has already

[31] Gilbert Aff. ¶¶ 18-19; see also Hausman [1997] Reply Aff. ¶ 13 (originally filed in Docket No. 97-231) (Reply App. Tab 20). BellSouth also has shown that approval of BellSouth's Application will lead to increased competition in the market for 1+ intraLATA toll calls and welfare gains due to the easing of the restrictions on BOC equipment manufacture. BellSouth Br. at 89-90. No party has seriously disputed these arguments.

noted. See BellSouth Br. at 94-95. Indeed, Professor Schmalensee has explained why under no reasonable economic theory does this "price squeeze" argument constitute a valid basis for questioning the public interest benefits of BellSouth entry into long distance. Schmalensee Aff. ¶¶ 50-60. As he explains, there are two versions of the "price squeeze" argument – the crude version, which suggests that BellSouth would be able to reduce its long distance charges by choosing a price level using the true economic cost of carrier access rather than the tariff price. But this "naïve argument is flat-out wrong," id. ¶ 52, because BellSouth would have to forego access revenues in order to gain long distance revenues. A more subtle version of the argument is that BellSouth and other BOCs would lower long distance prices below the market price in order to stimulate demand. Id. ¶ 57. As Professor Schmalensee explains, "[t]hat outcome is not a policy problem, since it improves economic welfare, driving prices closer to economic costs." Id.

AT&T expresses the concern that BellSouth will use local exchange revenues to subsidize its long distance business. AT&T at 91-92. In its zeal to deny the efficacy of regulation, AT&T does not bother to acknowledge that Congress and the Commission have taken extensive steps, including not only price cap regulation but also structural separation and audit requirements, to ensure that such behavior will not occur. See BellSouth Br. at 92-94. Indeed, AT&T's arguments have already been rejected; the Commission has concluded that its cost allocation and affiliate transactions rules, together with audits, tariff review, and the complaint process, "will effectively prevent predatory behavior that might result from cross-subsidization." Accounting Safeguards Order, 11 FCC Rcd at 17551, ¶ 28.

MCI warns about technical discrimination against unaffiliated interexchange carriers. MCI at 93-94. MCI never addresses express statutory prohibitions on such discrimination, interexchange carriers' monitoring capabilities, national and international standards, BellSouth's incentive to maximize access revenues, or how the sort of discrimination MCI imagines would allow BellSouth to obtain market power in the long distance business. See generally BellSouth Br. at 96-99; see also Schmalensee Aff. ¶ 56 (discussing incentive to maximize access revenues).

In the end, AT&T and MCI fall back on the claim that while misconduct by BellSouth may be readily detectable, it might not be sufficiently punished.[32] The incumbent long distance carriers treat substantial penalties, including civil and criminal penalties and revocation of interLATA authority, in a most cavalier fashion. See BellSouth Br. at 100-101. To the extent that they worry about complainants' ability to make out a case, the Commission has ruled that after a prima facie showing of non-compliance, the burden shifts to the Bell company to produce evidence of compliance with the conditions of entry under section 271. Non-Accounting Safeguards Order, 11 FCC Rcd at 22072-75, ¶¶ 345-351.

D. BellSouth's Entry Into the InterLATA Market Will Stimulate Competition in the Local Market

Having concluded that the local market in Louisiana satisfies the requirements of section 271(c)(1) and the competitive checklist, that BellSouth will provide interLATA services in Louisiana in compliance with section 272, and that BellSouth's entry into the interLATA market will cause prices to fall and increase consumer choice, the Commission will have addressed the

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[32] AT&T at 92; MCI at 94-95. Missing the irony, MCI also observes that "[a] determined incumbent can significantly delay the onset of competition by raising numerous meritless challenges to regulatory proceedings and arbitrations." MCI at 94. That double-edged comment that BellSouth likely will prevail in disputes regarding the requirements of the 1996 Act and implementing rules should give the Commission pause, as should AT&T's statement that what it fears as a result of interLATA relief (and the reason why consumers should be denied immediate price reductions) is conduct that could not be distinguished from "justifiable business practice." AT&T at 93.

issues Congress intended it to consider. The local market has been opened, interLATA entry will be conducted as Congress desired, and consumers will be better off. BellSouth's Application should be approved on this basis. See Part V. A, supra.

Nevertheless, numerous commenters have sought to cast this and other section 271 proceedings as a calculated trade-off between local and long distance competition. Even if local competition issues beyond checklist compliance were considered, which they should not be, no balancing would be necessary. Approving BellSouth's Application will promote both local and long distance competition. As the Louisiana PSC has found, "[o]nce full long distance competition is opened up in Louisiana, the major competitive providers of local exchange service will take notice and adjust their respective business plans to move Louisiana closer to the top of their schedules, resulting in faster and broader local exchange competition for Louisiana consumers." 1997 Louisiana PSC at 20. "Lowering this barrier" to BellSouth's entry into long distance "will create real incentives for the major interexchange carriers to enter the local market in Louisiana, because they will no longer be able to pursue other opportunities secure in the knowledge that BellSouth cannot invade their market until they build substantial local facilities." Id. And as already noted, section 271 relief will not only encourage AT&T, MCI, and Sprint to market bundled services to their long distance customers, but also will improve their ability to do so by lifting restrictions on joint marketing. 47 U.S.C. § 271(e)(1); see BellSouth Br. at 87-89.

Of course, these interLATA carriers would rather win business customers in the local markets they select than fight to retain their existing residential customers in Louisiana. Other CLECs likewise see opportunity in delaying BellSouth's interLATA relief, including retaining their advantage in one-stop shopping and the possibility of extracting concessions that could not be won in negotiations or arbitrations governed by sections 251 and 252.[33] See supra at 1& n.1 (quoting CLEC rallying cry). Accordingly, these carriers seek to shift the focus of the inquiry to a claim that offers almost limitless possibilities for expansion and delay: that the "harm to local competition is both glaring and substantial if BellSouth enters long distance now." MCI at 100.

Such contentions suffer from two fatal flaws. First, Congress forbade the Commission from re-writing its checklist with local competition requirements beyond the fourteen items negotiated by legislators. Second, even if Congress had left room for the Commission to adopt different or additional standards, no party can point to any specific benefit from delaying BellSouth's interLATA entry once BellSouth has complied with the checklist; it is therefore impossible for the Commission to assess such supposed benefits or to find that they outweigh the concrete consumer gains from immediate interLATA entry by BellSouth. On the contrary, the Louisiana PSC has concluded that "[d]elaying BellSouth's entry into long distance until effective competition exists in the local markets will only serve to delay the benefits of vigorous local competition." 1997 Louisiana PSC at 20.

ALTS and others suggest that BellSouth should not be permitted to compete in the in-region long distance market until every last issue regarding local interconnection and access has been resolved. See, e.g., ALTS at 18-19; Radiofone at 1-2. This approach — which would enable opponents to delay BellSouth's entry simply by asserting a grievance, without having to prove it — ignores that as the states and this Commission resolve new issues under the 1996 Act, those holdings will be binding upon BellSouth when it is competing in long distance. The fact

[33] Claims that CLEC's apart from the large interLATA carriers somehow qualify as disinterested parties, e.g., ALTS at 11 n.10, are thus absurd.

that local competition issues will inevitably arise in the future cannot justify delaying the benefits of long distance competition.

Using a different standard from those this Commission must use under section 271(d), DOJ suggests that local markets should be "full[y] and irreversibl[y] ope[n]" before BellSouth is granted in-region, interLATA relief. DOJ at 41. Then, DOJ suggests that benefits from imposing additional local-market requirements on Bell companies prior to allowing interLATA entry may exceed the benefits to be gained from more rapid Bell company participation in long distance markets. Id. at 41-42. Professor Hausman explains that DOJ's conclusion does not rest on an economic model, and, insofar as DOJ's expert discusses the work of Bell company witnesses, incorporates flawed assumptions and techniques. Hausman Aff. ¶¶ 63-71. DOJ also appears to ignore the factual finding of the Louisiana PSC that local competition in Louisiana will increase due to approval of BellSouth's.

Just as important, however, DOJ asks the wrong question. The issue before this Commission is not whether the benefits of opening BellSouth's local markets to competition justify retarding interLATA (as well as intraLATA toll, local, and manufacturing) competition.

It is whether any additional benefit from regulating BellSouth's local markets in accordance with DOJ's vague standard — over and above the benefits already guaranteed by opening the markets in accordance with Congress's checklist — outweighs the costs of delay. DOJ never attempts to address this issue, nor does its evaluation provide sufficient detail for the Commission (or any other party) to conduct the necessary analysis on DOJ's behalf.

No party in this proceeding can promise any additional local competition if new (unlawful) conditions for in-region, interLATA relief are stacked on top of the checklist requirements. CLECs may, for example, find serving Louisiana's residential customers unattractive without regard to the CLECs' demands for concessions from BellSouth. BellSouth, however, can promise *additional* competition if this Application is granted. BellSouth believes that if this Commission wishes to serve the interests of consumers, the choice is clear.

E. CLECs' Miscellaneous Allegations of Misconduct are Unfounded and Immaterial

In its Michigan Order, the Commission declared that it would be "interested" in any evidence that "a BOC applicant has engaged in discriminatory or other anticompetitive conduct." Michigan Order, 12 FCC Rcd at 20749-50, ¶ 397. Despite this open invitation, CLEC allegations of supposedly "bad" behavior are wholly insubstantial. These complaints have nothing to do with BellSouth's entry into interLATA services, or even BellSouth's opening of local markets. Instead, they are the last stand in a determined effort to keep BellSouth out of interLATA services.

Disclosure of CPNI. MCI claims that BellSouth has pursued "freezes" on release of its retail customers' CPNI to CLECs. MCI at 89-90. BellSouth does not solicit its retail customers concerning "freezing" access to their CPNI. Varner Aff. ¶ 56. Rather, BellSouth is in full compliance with section 222 of the Act and the FCC's implementing rules, and continues to provide CLECs with service records of BellSouth customers upon request. Id.

Marketing Practices. Two CLECs cite alleged instances – none in Louisiana – in which BellSouth service representatives supposedly were unhelpful or made disparaging or misleading remarks to CLEC customers who called to report service problems. See State Communications at 2-3; OmniCall at 3-4; see also TRA at 27. As stated in BellSouth's Application, BellSouth considers any disparagement of its competitors by BellSouth customer service representatives to be a serious breach of BellSouth's business principles. Varner Aff. ¶ 259. It is unclear whether the second- or third –hand incidents reported by the CLEC's actually occurred as stated; indeed BellSouth personnel are specifically trained not to engage in such practices. Funderburg Reply Aff. ¶¶ 48,54.

ACTL Moves. e.spire continues its attacks on BellSouth's imposition of reconfiguration nonrecurring charges ("RNRCs") on access channel termination location ("ACTL") moves. e.spire at 40-42. The argument — which e.spire has also made in a formal complaint that is pending before the Commission[34] — is that BellSouth's RNRCs exceed costs and are applied unevenly, and therefore deter interexchange carriers from switching direct trunked access purchases from BellSouth to a competing provider. As BellSouth has demonstrated in its answer to e.spire's complaint and in its subsequent briefs, e.spire's argument is without merit.[35] e.spire has grossly exaggerated BellSouth's charges for ACTL moves and has offered no meaningful evidence that controverts BellSouth's detailed cost studies. Its only basis for claiming that BellSouth applies RNRCs unevenly is that BellSouth has waived such charges on non-ACTL moves. But the Commission has already recognized that ACTL moves warrant "different, and generally higher, reconfiguration charge[s]" than other types of reconfigurations.[36]

State Regulatory Proceedings. Cox again drags out accusations that BellSouth has delayed, through a "purely procedural, meritless objection," Cox's Application for a certificate of public convenience and necessity with the Louisiana PSC. In fact, BellSouth recommended to

[34] American Communications Servs., Inc. v. BellSouth Telecommunications, Inc., No. E-96-20 (FCC).

[35] See BellSouth's Answer, No. E-96-20 (FCC filed April 8, 1997); Respondent's Reply Brief, No. E-96-20 (FCC filed May 27, 1997).

[36] Second Memorandum Opinion and Order and Order on Rcon., Expanded Interconnection with Local Telephone Company Facilities, 8 FCC Rcd 7341, 7359 ¶ 42 (1993).

the Louisiana PSC that Cox's Application be approved. Cox admits that "BellSouth had no objection to Cox being certified as a CLEC." Cox Ex. 1 at 13-14. The reason BellSouth intervened was because Cox's Application was not, contrary to Cox's suggestion, "routine." Cox's Application instead sought an exemption from the Louisiana PSC's unbundling rules, which raised general issues regarding interpretation of these rules with implications far beyond Cox itself. In order not to delay Cox from being certified, BellSouth proposed to the Louisiana PSC that Cox be granted temporary approval so that Cox's request for any exemption could be considered separately. The Louisiana PSC approved Cox's Application only six weeks after BellSouth intervened, and just twelve weeks from the date of Cox's filing.

Other Allegations. Radiofone claims that a ten-year-old complaint against BellSouth Mobility regarding roaming charges constitutes evidence of an anticompetitive bent. Radiofone at 1. The fact that Radiofone relies upon such a stale claim and an instance in which BellSouth overpaid Radiofone as its examples of misconduct by BellSouth shows just how far opponents will go to throw obstacles in the path of Bell company entry into the interLATA market. Varner Reply Aff. ¶ 29.

CONCLUSION

Congress established a blueprint for simultaneously opening local and long distance markets. This Commission should adhere to that plan. BellSouth has done everything required to open the local market in Louisiana, as the Louisiana PSC has verified. Further delay in opening interLATA markets will cause consumers direct harm, with no offsetting benefit of any kind. The Application should be granted.

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August 28, 1998

CERTIFICATE OF SERVICE

I, Austin C. Schlick, hereby certify that on this 28th day of August, 1998, I caused copies of the foregoing Reply Brief in Support of Second Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana to be served by overnight courier delivery upon all parties on the attached service list, except those parties designated with an asterisk, who will be served by hand.

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